IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 762 of 2007()

CMP.409/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

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REVN. PETITIONER: RESPONDENT:

XAVIER THOMAS @ SUNNY,
PROPRIETOR, ANUPAMA SCANNING CENTRE,
GOVT.HOSPITAL JUNCTION, NEYYATTINKARA,
NOW RESIDING AT `VIMAL' NEAR LUTHAR
MISSION CHURCH, VAZHUTHOOR, NEYYATTINKARA.

BY ADV. SRI.M.BALAGOVINDAN

RESPONDENTS:

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1. KUNJUMOL. C., S/O.CHARIES,
MANU COTTAGE, KUDUMBANOOR,
PRAVAHAMBALAM, NEMOM.

2. MANU XAVIER, 8 YEARS (SON, MANU COTTAGE)
KUDUMBANOOR, PRAVAHAMBALAM, NEMOM.

3. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.SAJU.S.A
PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 762 of 2007

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Dated, 7th September 2007

ORDER

The first respondent herein namely Kunhumol moved the Magistrate under Sec. 12 of The Protection of Women From Domestic Violence Act, 2005 ("PWDV Act" for short). She also filed C.M.P. 409 of 2007 for an interim mandatory relief by invoking Sections 20 to 22 of the P.W.D.V. Act. As per Annexure D order dated 23-01-2007, the learned Magistrate passed an ad-interim order directing the revision petitioner to pay a sum of Rs. 5,000/- (Rupees five thousand only) per month as maintenance to the first respondent and the child. It is the said order which is assailed in this revision filed under Sec. 401 Cr.P.C.

2. When this revision came up for hearing, the learned counsel appearing for the contesting respondents raised a preliminary objection that the revision is not maintainable since the impugned order is appealable under Sec. 29 of the Act. The objection raised is well founded. Since the impugned order is appealable under Section 29 of the Act this revision is not maintainable in view of Sec. 401 (4) Cr.P.C. Accordingly, this revision is dismissed without prejudice to the right of the revision

petitioner to prefer an appeal. Eventhough Section 29 does not contemplate the filing of an appeal beyond the period of limitation of 30 days or a power in the Sessions Court to condone the delay, since the appeal is provided to the court of Session, the Limitation Act will automatically apply and the revision petitioner can seek condonation of the delay, if any, in the appeal to be filed.

With this liberty, this Revision Petition is dismissed.

V. RAMKUMAR,
(JUDGE)

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